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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 PRINCE E. KENNEDY,

11 Petitioner,

12 v.

13 DAN PACHOLKE,

14 Respondent.
15

CASE NO. C08-5308BHS

ORDER DENYING
CERTIFICATE OF
APPEALABILITY

16 This matter comes before the Court on Petitioner's motion for certificate of
17 appealability. Dkts. 36 and 39¹. The Court has considered the pleadings filed in support of
18 and in opposition to the motion and the remainder of the file and hereby denies the
19 motion for the reasons stated herein.

20 **I. FACTUAL AND PROCEDURAL BACKGROUND**

21 On May 14, 2009, the Court adopted the Report and Recommendation of the
22 Honorable Karen L. Strombom, United States Magistrate Judge, and denied Petitioner's
23 writ of habeas corpus. Dkt. 33.

24 Petitioner now moves for a certificate of appealability. Petitioner maintains that
25 reasonable jurists could debate the Court's conclusion that (1) he was not entitled to an
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27 ¹ Petitioner moved to amend his motion (Dkt. 38). The Court grants Petitioner's motion
28 to amend his motion, and has considered the supplemental briefing (Dkt. 39).

1 evidentiary hearing; (2) that he was not entitled to relief on his claim that his guilty plea
2 was not knowing, voluntary, and intelligent due to ineffective assistance of counsel; (3)
3 that he was not entitled to relief on his claim of ineffective assistance of counsel due to
4 counsel's failure to investigate new alibi witnesses.

5 **II. DISCUSSION**

6 Under 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b), a
7 petitioner may not appeal the final order in a habeas corpus proceeding in which the
8 detention complained of arises out of a state court proceeding or in a proceeding under 28
9 U.S.C. § 2255 unless the district court or the Ninth Circuit issues a certificate of
10 appealability identifying the particular issues that may be pursued on appeal. *United*
11 *States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

12 To obtain a certificate of appealability, a petitioner must make a substantial
13 showing of the denial of a constitutional right. A petitioner must also demonstrate that
14 reasonable jurists could debate whether, or agree that, the petition should have been
15 resolved in a different manner or that the issues presented were adequate to deserve
16 encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When
17 the denial is based on procedural grounds, a petitioner must show that jurists of reason
18 would find it debatable whether the petition states a valid claim of the denial of a
19 constitutional right and that jurists of reason would find it debatable whether the district
20 court was correct in its procedural ruling. *Id.*


21 Having reviewed the record in this case, including Judge Strombom's Report and
22 Recommendation (Dkt. 31), Petitioner's objections thereto, and the Court's subsequent
23 order dismissing the habeas corpus petition (Dkt. 33), the Court finds that the
24 determination that Petitioner's claims fail is not debatable among reasonable jurists.
25 Therefore, the Court declines to issue Petitioner a certificate of appealability.

1 **III. ORDER**

2 Therefore, it is hereby

3 **ORDERED** that Petitioner's motion for certificate of appealability (Dkts. 36 and
4 39) are **DENIED**.

5 DATED this 16th day of July, 2009.

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BENJAMIN H. SETTLE
United States District Judge